COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Competitive Market Initiatives	)	D.T.E. 01-54

INITIAL COMMENTS OF COMPETITIVE SUPPLIERS
REGARDING ACCESS TO CUSTOMER INFORMATION

I. INTRODUCTION

AES New Energy, Inc., ChooseEnergy, Enron Energy Services, Exelon Energy Company, Green Mountain Energy Company, the National Energy Marketers Association, and The NewPower Company (together the "Competitive Suppliers"[1]) appreciate the opportunity to provide the Department of Telecommunications and Energy ("Department" or "DTE") with initial comments in this proceeding.

In its Order opening this investigation, the Department aptly stated that "as we approach the half-way mark of the seven year transition period established by the 1997 Electric Restructuring Act, retail competition has not advanced as quickly as some anticipated." The DTE further noted that "suppliers currently serve less than one percent of consumers served by Massachusetts electric distribution companies, representing only five percent of electric load." Accordingly, the Department opened this investigation with the clear "intent to minimize or eliminate any barriers to competitive choice." Order

[1] Although the group is referred to as "Competitive Suppliers" for convenience, ChooseEnergy is a software service provider and not a supplier.

Opening Investigation of Competitive Market Initiatives, D.T.E. 01-54 ("Order Opening Investigation") at 1-2.

The Competitive Suppliers applaud the Department for opening this investigation as a means of confronting some of the stark realities of the current state of the competitive electricity market in Massachusetts. As the Department is well aware, the number of default service customers in the Commonwealth increases every month and these customers have seen a steady increase in their rates for generation service. However, when these customers contact their electric distribution companies or the Department, they learn that although numerous competitive suppliers are licensed to do business in this state, few, if any, are prepared to serve residential default service customers.

As discussed in greater detail in the comments that follow, the current regulatory framework presents a number of significant barriers to the development of the competitive market. Fortunately, the Competitive Suppliers and others who are participating in this proceeding have offered a number of well-tested solutions that would minimize or eliminate these barriers to competition. As described below, in many cases these solutions have been implemented in other jurisdictions with great success.

The challenge for the Department in this proceeding is to look carefully at all barriers to competition and, after affording all parties a reasonable opportunity to be heard, take steps to remove unnecessary barriers. Where those barriers are in the form of Department policies, the Department can take action in this proceeding, as the Department already has done in directing distribution companies (1) to develop Active Competitive Supplier lists, and (2) to provide a list of default customer names, addresses and rate classes to suppliers that execute an agreement with the distribution company requiring the supplier not to use this information for any purpose other than marketing electricity-related services. Order Opening Investigation at 6-7.

Moreover, where barriers to competition appear in the form of regulations or distribution company tariffs regarding terms and conditions, the Department also can move decisively to amend those regulations and order changes in tariff terms.

Unfortunately, despite overwhelming evidence that the current system is seriously flawed, at the July 24, 2001 technical session in this proceeding a number of utility representatives pointed to existing regulations and tariff provisions as adequate to address concerns raised by competitive suppliers. For example, in response to those suppliers supporting a system under which customers would be given the opportunity to "opt out" of a program where billing and historic usage information is provided to suppliers – an issue which is addressed in greater detail in the sections of these comments which follow -- some distribution company representatives noted that the current regulations already allow customers to "opt in" to this kind of system by providing competitive suppliers with the authorization to obtain their historic usage data from the distribution company. July 24, 2001 Technical Session, Tr. 109-110.

The Competitive Suppliers view this as just one good example of how unchecked fealty to existing requirements – simply because such requirements are part of a regulation – can unnecessarily inhibit competition. As discussed further below, the current requirement that competitive suppliers obtain customer authorization for release of certain kinds of billing and usage information operates as a barrier to competition. As such, it is a piece of the framework that is broken and must be fixed, regardless of the fact that it is part of a regulation.

As Mr. Barry Perlmutter of the DTE Staff noted at the July 24, 2001 technical conference in this proceeding, many of the decisions made by the Department in formulating a regulatory framework for electric restructuring were made in 1997 and 1998 – before the Department and others had the benefit of seeing how competition would develop in the Commonwealth. The Department is revisiting its decisions at this time to see if they are inhibiting the development of a competitive marketplace. July 24, 2001 Technical Session, Tr. 111. It is unquestionable that certain elements of the DTE's restructuring framework continue to inhibit the development of a competitive marketplace – particularly with respect to default service customers.

In the sections that follow, the Competitive Suppliers offer some proposals for remedying some flaws in the existing regulatory framework relative to suppliers' ability to access critical customer information. In addition, the Competitive Suppliers offer their response to the Department's July 27, 2001 briefing question regarding electronic signatures, noting therein that (1) current Federal law requires Massachusetts to recognize electronic signatures; and (2) action by the Department affirming the applicability of the Federal E- SIGN law to electricity transactions in Massachusetts will go along way toward encouraging a robust electricity market in the State.

II. CUSTOMER NAMES AND ADDRESSES

In its Order opening this investigation, the Department directed the utilities to provide the names, addresses, and rate classes of its default service customers to licensed suppliers upon request. In order to receive the information, the supplier must execute an agreement not to use the information for any purpose other than to "market electricity-related services." Order Opening Investigation, p. 6.

At the July 24 technical session, Department staff requested written comments regarding a number of issues relating to the implementation of this directive. The Competitive Suppliers' comments on these issues are as follows:

Frequency of updates: The list should be updated at least quarterly.

Format of information: The list should be provided in electronic form, in a format this is sortable. Given that all of the utilities are providing the same information, the information should be provided in a common format. The Competitive Suppliers are willing to work with the utilities to develop a common format that is convenient and useful for all parties. Among the issues that should be considered is posting the information on the Internet in a secure location. This would reduce the costs for utilities to provide, and suppliers to obtain, the updates.

Identifying number: The list should include an identifying number for each customer. This could be, but need not be, the customer account number. An identifying number would enable suppliers to track changes in customer information in successive generations of the list. For example, it would enable suppliers to honor opt out requests that are received after the supplier has received and used the first version of the list. It is exceedingly difficult to track residential customers by name and address; many names are common and addresses change over time. An identifying number would enable suppliers to find newly opting-out customers, and to exclude them from future communications.

Contact name for commercial and industrial customers: The customer lists should also include a contact name for commercial and industrial customers where such a name is available. This would enable suppliers to target their communications to those customers more effectively.

Opt-out procedure: At the technical session, the utilities indicated that they have received a limited number of requests from customers to opt-out of the lists that are provided to suppliers. The Competitive Suppliers agree with the utilities and Department staff that all such requests should be honored. However, there is no need to develop a more pro-active opt-out process, given the Department's determination that the information is not proprietary and the limits that are imposed on suppliers' use of the information. Order Opening Investigation, p. 6.

Information regarding Standard Offer Customers: The Department has focused on default service customers because of the recent rate increases affecting those customers. However, standard offer customers should also be included in the customer information lists. Customer name, address, and rate class information is no more proprietary for standard offer customers than it is for default service customers. Also, the availability of the customer lists will make it easier for suppliers to market to standard offer customers as standard offer prices rise and market prices fall. This will further the Department's goal of creating choice for ***all*** customers. It is reasonable to limit the customer lists to default service customers for a limited time to work out the bugs.

However, within six months lists of standard offer customers should also be made available.

III. CUSTOMER USAGE AND CREDIT INFORMATION

The Competitive Suppliers agree with the Department that, for certain information beyond name, address, and service class, some form of customer authorization is required. However, not all information is the same. Different types of information have different levels of sensitivity, and hence require different levels of customer authorization.

The Competitive Suppliers recommend that customer usage and credit information be divided into three categories as follows:

Type of Data	Customer Authorization Required
Monthly usage data	Opt-out
Interval data	Opt-in
Customer payment information	No disclosure recommended at this time

A. Monthly Usage Data -- Opt-Out Customer Authorization

The first type of data is non-interval, usage data. It includes monthly consumption and peak demand, where available. In many, if not all, jurisdictions that currently provide this information to suppliers, the common practice is "opt-out" rather than "opt-in". The "opt-out" approach requires that customers be notified that this information is being made available to suppliers unless the customer wishes to block release of the information, or "opt-out". It is then important to provide these customers a convenient means to exercise their right to restrict release of this data.

For instance, Ohio recently debated this very issue through a workgroup process, which included representatives from utilities, competitive suppliers, Commission Staff, Consumers' Counsel and customer groups. The outcome of this collaborative process includes a "Pro Forma Certified Supplier Tariff", which is incorporated into each utility's tariff. The pro forma tariff provides, in part:

> The Company will provide End-use Customers the option to have all the End-use Customer's information listed in the section below removed from the End-use Customer information list. At the same time the Company will also provide End-use Customers the option to have all End-use Customer's information listed below reinstated on the End-use Customer information list. The End-use Customer will be notified of his or her options quarterly throughout the market development period.
>
> The following information will be provided on the End-use Customer information list for each End-use Customer who has ***not requested that all information be removed from this list***" (emphasis added).

The lists are required to be provided by either compact disk or on a secure web site, they must be in a "uniform and usable format that allows for data sorting." Information included on the lists includes:

?? Customer name
?? Service address
?? Service city, state and zip
?? Mailing address
?? Mailing city, state and zip
?? Rate schedule, including class and sub-class (if applicable)
?? Rider (if applicable)
?? Load profile reference category
?? Meter type
?? Interval meter data indicator
?? Budget bill indicator
?? Meter read cycle
?? Most recent twelve (12) months of historical consumption data (actual energy usage plus demand, if available)

In practice, the Ohio model works by requiring utilities to inform customers (via bill insert or separate mailing) of the ability to opt-out of customer lists, quarterly. Customers are typically given the option of a response by mail or telephone and required to act within a reasonable period of time, in order to exercise this right. Utilities then update the lists and make them available to suppliers. At this time, the Competitive Suppliers believe that this process has run smoothly in Ohio, and have seen no indication of customer concern or displeasure.

In answer to the Department's concern that, "…historic load data and credit information may be considered proprietary information to companies operating in certain industries" (Order Opening Investigation at 8), the Competitive Suppliers note that for most customers, historic load data is not competitively sensitive information. The provision of twenty-four data points (12 months usage and 12 months demand) does not, in most cases, give any unwarranted insight into a company's operation. However, customers may exercise the "opt-out" should they feel differently.

The Competitive Suppliers urge the Department to consider expanding the lists of customer data to be made available to licensed competitive suppliers to include all of the data elements listed above. Additionally, these lists should be made available for all distribution company customers, including those served under standard offer.

B. Interval Data -- Opt-in Customer Authorization

As stated in Section A above, the suppliers generally favor the opt-out format for the dissemination of customer usage data. However, the marketers acknowledge that for certain large customers who utilize interval meters, electricity consumption and usage patterns may reveal competitively sensitive information. Therefore, considering the potentially sensitive nature of such data for this particular group, the suppliers believe that the Opt-in method may provide a balance between protecting information a customer may consider proprietary, while at the same time providing an avenue for customers to make such information readily available to marketers as a means of facilitating the marketing process which can ultimately result in more timely competitive offers.

Under an opt-in format, the utilities would inform their interval metered customers, by way of a bill insert or separate mailing, about the option to have the interval data made available to licensed suppliers for the purpose of developing offers for energy supply. By this method, only customers who affirmatively respond to the utility's mailing would have their data made available. Such customers' data would be released to licensed suppliers who meet the same criteria the Department has set forth for the release of Default Service customer lists. The interval data and usage history for these customers could be posted on a website or other format for access by licensed suppliers. Additional information such as account number, meter number, rate class, service voltage, and billing cycle date should be included.

The availability of the data would not only facilitate and encourage marketing efforts; it would also greatly minimize the delays commonly experienced in obtaining interval data on an individual customer basis. These delays have continued to frustrate marketing efforts and have no doubt added to the operating costs of suppliers and certain utilities due to the inefficiencies of the processes employed by some utilities.

For those customers who do not opt-in to have their interval data shared with marketers, the current process of obtaining individual customer authorization would continue to be available. Under this current method, whereby suppliers must get individual authorization from prospective customers, there are certain problems that must be addressed. Most notable has been the inconsistency in the response time by the utilities. In some cases the data is received from utilities within one to two days while other utilities may take one to two weeks, or significantly longer. The process has been further complicated by the recent tariffs, which limit each customer to only one free request for data per calendar year. Customers who wish to have data sent to more than one supplier are charged a fee for data beyond the first request. In some cases the customer is charged the fee, while in other case the marketer may be charged the fee. Clearly this is a process that needs consistency.

In order to accomplish the Department objective of encouraging competitive suppliers to market in Massachusetts, the suppliers recommend the following standard process for handling customer-specific data requests:

1. Data Required: Interval data would consist of the 12 months hourly data. The utilities would also indicate whether the customer has primary or secondary voltage.

2. Response Time: The data should be available on a current month basis by accessing the utilities' websites with appropriate security measures to protect against unauthorized access. The suppliers recognize that some of the utilities would require a transition period to make necessary technology upgrades. During such a transition period, all requests must be completed and sent electronically to the supplier within two business days following the date of the request.

3. Follow-up: If the utility requires any additional information from a competitive supplier prior to responding to a request for interval data, the utility must advise the supplier within one day via e-mail so that the supplier can take needed action to remedy the problem.

4. Method for Requesting Data: The current method for obtaining and submitting customer authorization general involves getting the customer's written authorization via letter or fax, and then in turn faxing that document to the utility. This method is very cumbersome. Suppliers or customers should be able to submit authorization by using electronic signatures. Acceptance of electronic signatures is consistent with Federal law, as discussed in more detail below. Once the authorization is submitted, current customer data should be available via the utilities' websites through the use of appropriate access codes to protect against unauthorized website visitors, similar to the way 12-month usage history can be obtained from Massachusetts Electric. Utilities should also permit interval data requests via EDI, or via other electronic means such as e-mail. When requesting interval data by this process, the customer authorization would be held on file by the supplier for future verification if needed.

5. Fees: Under new tariffs filed by the utilities in conjunction with DTE 01-28, the utilities will charge a fee for any interval data requests beyond one per customer per year. The existence of such fees for customer data creates an obstacle to competition and should be eliminated. Importantly, once a customer has made its initial request, the incremental cost of responding to subsequent requests with the same data should be minimal. Marketers understand that requests for updated data after the customer has already utilized its one time per year request may result in extra costs. In such instances a cost based fee, although not desirable, may be appropriate. Further if the suppliers were able to access interval data themselves from a designated website as suggested above, the need for fees for individual requests would essentially be eliminated.

C. Customer Payment Information

Given the extreme sensitivity of customer payment information, the Competitive Suppliers do not recommend that the Department develop a process for utility disclosure of that information at this time. Competitive Suppliers do not currently see the failure of utilities to provide customer payment information to be a barrier to the development of the competitive market. If it becomes a barrier, the Department can revisit this issue.

While customer payment information should not be disclosed directly, the Competitive Suppliers do recommend that the lists of residential default service customers provided by the utilities to suppliers include only customers that are not more than thirty days in arrears. Screening the lists in this way would not raise customer privacy concerns since customers that are in arrears would simply not be listed. However, it would make the lists more useful for suppliers.

IV. Definition of "Electricity-related Services"

At the July 24, 2001 technical session, several questions were raised regarding interpretation of the phrase "electricity-related services" as it is used in the Order Opening Investigation. The Department's Order directs distribution companies to make lists of default service customers available to licensed suppliers who have executed an agreement to use this information only for marketing of "electricity-related services." In the spirit of helping customers by increasing the opportunities to switch from default or standard offer, the Competitive Suppliers suggest that this phrase should be given the broadest possible interpretation.

As markets develop, it is difficult to say what mixes of products and services might become available and which of these may be attractive to customers. Customers should ultimately be given the right to choose and to decide what they feel is valuable. In order to fully stimulate this developing market, it is desirable to permit the customers to experience as many opportunities and options as possible. As suppliers attempt to design new offerings to customers or develop new bundles of products and services, the ability to market these products and services to those who can benefit most from them will provide important market stimulus.

V. ELECTRONIC SIGNATURES

A. Overview of Issue Presented

The Department has requested an analysis of whether electronic signatures are valid in Massachusetts, and in particular, whether there is any legal impediment to the use of electronic signatures in transactions related to contemplated competitive initiatives such as the authorizations for switching to a competitive supplier or the authorization to release customer usage information. As the following analysis shows, Massachusetts law includes legal impediments to the use of electronic signatures in the contemplated transactions, but these impediments cannot be enforced as a result of the enactment of the ***Electronic Signatures in Global and National Commerce Act***, 15 U.S.C. §7001, et. seq., which specifically prohibits the imposition or continuation of any such impediment.

The Department has requested comments as to whether the use of electronic signatures is valid in Massachusetts. M.G.L. c. 164 § 1F (the “Restructuring Act”) requires written authorization of a customer’s decision to switch to a competitive supplier and DTE regulations at 220 CMR 11.00, *et. seq.* include the requirements of written authorizations by a customer in order both to evidence a customer's decision to choose a competitive supplier and to authorize disclosure of customer usage history. These requirements appear to bar the use of electronic means in these two instances.

B. Enactment of the Electronic Signatures in Global and National Commerce Act

On June 30, 2000, President Clinton signed into law the ***Electronic Signatures in Global and National Commerce Act*** (hereafter, "E-SIGN Act").[2] The law became effective on October 1, 2000 and is codified at 15 U.S.C. § 7001 *et. seq.* The E-SIGN Act is designed to implement a national uniform standard for all electronic transactions that encourages the use of electronic signatures, electronic contracts and electronic records by providing legal certainty for these instruments when signatories comply with its standards.

1. Scope of the E-SIGN Act.

Section 101 (a) of the E-SIGN Act provides a clear and unequivocal statement of its intended scope as follows:

> (a) In General – Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II of this chapter), with respect to any transaction in or affecting interstate or foreign commerce-
>
> (1) a signature, contract, or other record relating to such transaction *may not be denied legal effect, validity, or enforceability solely because it is in electronic form*; and
>
> (2) a ***contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation***." (emphasis added).

Section 101 (b) of the E-SIGN Act deals directly with the issue of whether the provisions of G.L. c. 164 and the DTE's regulations can be interpreted as a bar to the use

---

[2] Public Law No. 106-229.

of electronic means in evidencing the required "affirmative choice". That provision states:

> (b) This title does not-
>
> (1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law ***other than a requirement that contracts or other records be written, signed, or in nonelectronic form***. (emphasis added)

Thus, statutes or regulations that limit the use of electronic transactions or electronic signatures are expressly preempted by the E-SIGN Act with regard to any transaction affecting interstate or foreign commerce.[3] This language applies with full force to the Restructuring Act and the regulations promulgated pursuant thereto, including the signature obligation contained in 220 CMR 11.05(4)(c) as well as the continued applicability of the statutory and regulatory requirements for written confirmations contained in 220 CMR 11.05(4)(d). With the passage of the E-SIGN Act, any pre-existing impediment to the use of electronic signatures or the use of documents in electronic form ceased on the effective date of the act.

2. Consumer Protection Provisions of the E-SIGN Act in regard to Written Information are designed to Discourage Consumer Abuses such as "Slamming".

The E-SIGN Act contains provisions to provide the necessary safeguards to consumers to prevent the abuse of electronic transactions. The Act specifically provides

[3] The transactions at issue in G.L. c. 164 are in interstate and/or foreign commerce or affect such commerce. . The Courts have interpreted the phrase "in or affecting interstate commerce" broadly. *National Labor Relations Board v. Reliance Fuel Oil Corp*., 371 U.S. 224 (1963). Certainly, the act of signing up with a competitive supplier for electricity service over the Internet is a transaction in interstate commerce. Moreover, where the process by which retail electric service is terminated is one of the listed exceptions from the E-SIGN Act (*see* 15 U.S.C. § 7003(b)(2)(A)), it follows that the Federal law contemplates that all other aspects of retail electricity sales fall under its purview and therefore should not be burdened by a wet signature requirement.

that that a customer must consent to the use of electronic records and notifications and that the customer be provided with the requisite information and means in order to make such an election. *See* 15 U.S.C. § 7001(c)(1). The customer is not required to consent to the use of electronic means and may withdraw consent, reverting to the use of actual paper records and notices. *Id.*[4]

Further protections under the E-SIGN Act provide that:

> If a law that was enacted prior to this chapter expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

15 U.S.C. § 7001(c)(2)(B).

This latter provision speaks directly to certain DTE regulatory requirements, such as that embodied in 220 CMR 11.05(4)(d) providing that service cannot commence until three days following the customer's receipt of a *written* confirmation of the agreement to purchase electricity from a competitive supplier. The provision of the E-SIGN ACT appears to vitiate the absolute requirement of a written confirmation of an agreement to receive power from a competitive supplier and suggests that, if a consumer is willing, the required confirmation could be provided electronically on the Internet.

Therefore, a consumer indicating a willingness to receive information electronically, may receive a confirmation of a decision to switch by email or other electronic means. The requirement of confirmation will continue albeit in electronic form. Also unaffected by the enactment of the E-SIGN Act is the distribution company's

[4] Section 7001(c) further requires that the consumer must also be informed of the hardware and software requirements for access to and retention of the electronic record. The consumer must consent electronically or confirm his/her consent electronically in a fashion, which demonstrates that the consumer can access information in electronic form.

requirement to include a notice of the switch in the first bill sent after initiation of alternative service. These consumer protective mechanisms will continue to provide an effective weapon against consumer abuse.

3. Exemptions and Preemption.

In Section 7003 the E-SIGN Act excludes a number of areas, which are the subject of state law and regulation. Specifically exempted are state statutes, regulations or other rules relating to the creation of wills, codicils, or testamentary trusts; statutes, regulations or rules governing adoption, divorce or other matters of family law; and the provisions of the Uniform Commercial Code[5]. Additionally, the provisions of the E-SIGN Act do not apply to court orders or notices or other judicial documents; notices of default, acceleration, repossession, foreclosure of an agreement involving a personal residence; the cancellation or termination of health insurance or life insurance; the recall of a product involving a risk of health or safety; or any document involved in the transportation or handling of hazardous material. With the exception of the requirement in Section 7003(b)(2)(A) of the E-SIGN Act that notices of termination of utility services may still be required to be in written form, none of the exemptions enumerated in the Act apply to a contract between an electricity customer and a competitive supplier of electricity.

Aside from the above exclusions from the Act, the E-SIGN Act specifically preempts the implementation of any statute or regulation by a state that attempts to circumvent its provisions. Section 7002(a) permits states to enact legislation or regulations requiring a paper writing *only* if a state enacts a law, which conforms to the

[5] Other than sections 1-107 and 1-206 and Articles 2 and 2A of the UCC.

Uniform Electronic Transactions Act ("UETA") or specifies alternative requirements or procedures that affect electronic transactions and electronic signatures provided such rule or regulation is consistent with the standards enumerated in Section 7001 of the E-SIGN Act.

The UETA, drafted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), has been enacted in approximately 37 states[6] while several others, including Massachusetts are currently considering its enaction.[7] Two versions are currently under consideration by the Massachusetts Senate Committee of Science and Technology, Sen. No. 1803 and Sen. No. 1805. Both versions are based upon the uniform law promulgated by the NCCUSL, however Sen. No. 1805 contains some provisions not in the uniform bill. Regardless, both bills contain language that states:

(a) A record or signature cannot be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation

(c) If a law requires a record to be in writing, an electronic record satisfies the law

(d) If a law requires a signature, an electronic signature satisfies the law.

Sen. No. 1803, § 7 and Sen. No. 1805, § 7. The scope of the statute is also identical in both statutes, governing all transactions except laws governing the creation and execution of wills, codicils or testamentary trusts and certain provisions of the Massachusetts UCC, M.G.L. c. 106. Sen. No. 1803, § 3(b); Sen. No. 1805, §§ 3(b)(1), 3(b)(2). Both bills contain provisions for the benefit of consumers which limit the scope of the Act,

[6] *See* Uniform Electronic Transactions Act (UETA) State-by-State Comparison Table, *compiled by* Baker & McKenzie <http://www.bmck.com/ecommerce/uetacomp.htm> (last visited August 3, 2001).
[7] *See id.*

including a requirement that notices of the cancellation or termination of utility service (including water, heat and power) be excluded from the application of the Act, however, that such limitations be consistent with the federal E-SIGN law. Sen. No. 1803, § 17(b); Sen. No. 1805, § 3 (b)(4)(d)(i). No other provision would exclude the applicability of the Massachusetts UETA, in either version, to suppliers of utility services insofar as effectuating a change in service provider is concerned.

C. Conclusion regarding Electronic Signatures

On September 25, 2000, Jacob J. Lew, Director of the United States Office of Management and Budget, issued a memorandum to the heads of all federal agencies and departments. Director Lew made the following observation about the new law:

> Under E-SIGN, companies can contract online to buy and sell a broad array of products and services. Businesses can use servers the size of a laptop to collect and store transaction records that once filled up vast warehouses. Consumers can buy insurance, get a mortgage, or open a brokerage account on-line, without waiting for physical documents to be mailed back and forth. E-SIGN will offer improved efficiencies in U.S. Markets; this historic legislation will help to bring the full benefits of electronic commerce to our economy.

Our analysis of the provisions of the E-SIGN Act and their relationship to the impositions included in the Restructuring Act inextricably leads us to the conclusion that state law notwithstanding, there presently exists no bar to the use of the Internet and other electronic transmittal methods in the enrollment of customers by competitive suppliers.

VI. CONCLUSION

The Competitive Suppliers respectfully request that the Department adopt the measures described above to foster the development of the competitive market.[8]

[8] The attached comments represent a consensus position of the undersigned parties and are not intended to amend or supersede the positions taken by the individual parties.

Respectfully submitted,

AES NEWENERGY, INC
By

John L. Giesser
530 Atlantic Avenue
Boston, MA 02210
(617) 772-7500

CHOOSE ENERGY
By

Robert Luciano
Vice President, Legal Affairs
200 Wells Avenue
Newton, MA 02459
(617) 795-7478

ENRON ENERGY SERVICES
By

Frank Rishe
Manager, Government Affairs
343 Thornall St., 5th Fl.
Edison, NJ08837
(732) 548-1234 x223

EXELON ENERGY
By

R. Scott Brown
Director-Business and Governmental
Affairs, Exelon Enterprises
2600 Monroe Boulevard
Norristown, PA 19403
(610) 676-8160

GREENMOUNTAIN ENERGY CO.
By

Karen O'Neill
Vice President – New Markets
75 Green Mountain Drive
South Burlington, VT 05403
(802) 846-2560

NATIONAL ENERGY MARKETERS
ASSOCIATION
By

Stacey Rantala
3333 K Street, NW
Suite 425
Washington, DC 20007
(202) 333-3288

THE NEWPOWER COMPANY
By

Becky Merola
Director, Government Affairs
6418 Wynwright Drive
Dublin, Ohio 43016
(614) 873-2995

Date: August 10, 2001